REMARKS

This Response, filed in reply to the Office Action dated March 20, 2009, is believed to be fully responsive to each point of rejection raised therein. Accordingly, reconsideration and allowance are respectfully requested.

Cited Art Rejections

Claims 1-7, 9-16, and 18-21 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Sekihata *et al.* (US Pub. No: 2002/0159480) ("Sekihata"), in view of Russell *et al.* (US Patent No. 6,496,519) ("Russell"). Claims 8 and 17 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Sekihata, in view of Russell and Tang (US Patent No. 6,195,332). Applicant respectfully submits the following arguments in traversal of the Examiner's rejection.

Claim 1

With respect to **claim 1**, Applicant respectfully submits that the cited art of record does not disclose or suggest, at least:

> configuring said rate regulator with said respective overhead criterion to charge for uncounted overhead, whereby each data packet transmitted through said rate regulator is transmitted to said egress port as a packet containing said uncounted overhead as determined by said overhead criterion, thereby ensuring that said regulator bandwidth does not exceed said egress port bandwidth, wherein the data path includes a plurality of network data protocols [and] wherein said uncounted overhead comprises overhead from the plurality of network data protocols.

The Examiner acknowledges that Sekihata does not disclose or suggest: "wherein the data path includes a plurality of network data protocols", as recited in claim 1. However, the Examiner relies on Russell to allegedly remedy the deficiencies of Sekihata. Russell relates to

transporting OSI layer 2-type (L2) frames (such as Ethernet frames) through an OSI layer 1-type (L1) frames (such as SDH or SONET) wherein L2 frames of various data rates can be transferred on the same L1 frame (Russell at col 6, line 65 to col. 7, line 21).

The Examiner alleges that, because Russell discloses transmitting Ethernet (L2) frames over SDH (L1) frames, Sekihata, in view of Russell disclose that the data path of claim 1 "includes a plurality of network data protocols." Applicant respectfully disagrees.

Although Russell arguably discloses multiple data protocols along a data path between an ingress port and an egress port (FIG. 1, data path 102 carries Ethernet frames encapsulated in SDH frames), Russell does not disclose or suggest accounting for uncounted overhead from multiple network data protocols. In particular, even assuming, *arguendo*, that Sekihata could be combined with Russell, such combination, would disclose, at best, bandwidth control of the Ethernet frames (L2), and would not disclose or suggest that:

> each data packet transmitted through said rate regulator is transmitted to said egress port as a packet containing said uncounted overhead ... wherein the data path includes a plurality of network data protocols [and] wherein said uncounted overhead comprises overhead from the plurality of network data protocols.

as recited in claim 1 (emphasis added). At least for this reason, Applicant respectfully submits that claim 1 is patentable over the cited art.

Furthermore, still with respect to **claim 1**, Applicant respectfully submits that the cited art of record also does not disclose or suggest:

> configuring said rate regulator with said respective overhead criterion to charge for uncounted overhead, whereby each data packet transmitted through said rate regulator is transmitted to said egress port as a packet containing said uncounted overhead as determined by said overhead criterion, thereby ensuring that said regulator bandwidth does not exceed said egress port bandwidth,

as recited therein (emphasis added).

The Examiner relies on Sekihata to disclose the above-underlined elements. In Sekihata, bandwidth control is based on the difference between the line bandwidth and the setting bandwidth. However, Sekihata does not disclose "ensuring that said regulator bandwidth does not exceed said egress port bandwidth," as recited in claim 1. Sekihata does not address the possibility that the transmission bandwidth might exceed an egress port's bandwidth. Instead, Sekihata controls the transmission bandwidth (*i.e.*, Sekihata's setting bandwidth) with respect to the line bandwidth.

Applicant notes that, in the Office Action dated March 28, 2008, in response to an Applicant's argument similar to the one above, the Examiner argued that Sekihata discloses these elements because Sekihata considers the line bandwidth when determining the setting bandwidth, and Sekihata's line bandwidth discloses the egress port bandwidth of claim 1 (Office Action dated March 28, 2008, at pages 14 and 15). Applicant respectfully disagrees.

Applicant respectfully submits that Sekihata's line bandwidth is directed to the line speed of the network's medium (*see* Sekihata at ¶ [0040]), and not to an egress port bandwidth. Thus, Sekihata suffers from the deficiency that additional overhead may result in excess bandwidth at the egress port after the additional overhead is added at the egress port (*see* FIG. 2, and specification at page 2, line 23 to page 3, line 9). For this additional reason, Applicants respectfully submit that claim 1 is not disclosed by Sekihata.

Furthermore, Applicant respectfully submits that Russell and Tang do not remedy the deficiencies of Sekihata.

Claims 2-21

With respect to **claim 12**, for reasons analogous to those above regarding claim 1, applicant respectfully submits that claim 12 is patentable over the cited art of record.

With respect to **claims 2-11 and 13-21**, Applicant respectfully submits that these claims are patentable by virtue of their respective dependencies and for their additionally recited elements.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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Date: June 19, 2009